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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,612	03/15/2004	Todd C. Werner	1130.32	2611
21901	7590	03/15/2006	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			KOHNER, MATTHEW J	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/708,612	WERNER, TODD C.
	Examiner	Art Unit
	Matthew J. Kohner	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 January 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-6 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 6 is/are allowed.
 6) Claim(s) 1, 3 and 4 is/are rejected.
 7) Claim(s) 5 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,674,736 to Tsubo.

Tsubo discloses an apparatus for separating from one another contiguous items in a substantially vertical stack that are frictionally engaged to one another, so that said items are disengaged from one another upon entering into a sheet feeder, comprising:

- a rocker plate (46) positioned at a lowermost end of said vertical stack; and
- rocking means (86) for causing said rocker plate to oscillate as said sheet feeder

operates;

said items being adapted to follow a longitudinal path of travel upon entering into said sheet feeder (see Fig. 7);

- a rocker bar (100) transversely disposed relative to said longitudinal path of travel;
- said rocker bar being mounted for pivotal movement about a transversely disposed axis (see Fig. 7; phantom lines of rocker bar);

- said rocker-plate (46) being fixedly secured to said pivotally mounted rocker bar; and
- said rocking means being connected (through cam 110) to said rocker bar;

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- whereby items in said bin are jostled by said oscillation of said rocker plate, said jostling breaking frictional bonds between contiguous items (col. 12, lines 55-60).

In regard to claim 3, Tsubo discloses

- a drive shaft (112) transversely disposed relative to said longitudinal path of travel;
- said drive shaft rotating about its axis of rotation when said sheet feeder is operating;
- a cam (110) secured to said drive shaft for conjoint rotation therewith;
- a cam follower (108) biased to bear against said cam;
- said cam follower being connected to said rocker bar (see Fig. 7) and causing said rocker bar to reciprocate about said transversely disposed axis when said drive shaft is rotating.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Tsubo in view of US Patent No. 6,113,093 to Morinaga et al. (*hereinafter* “Morinaga”).

In regard to claim 4, Tsubo discloses:

- a base plate (36) that overlies said rocker plate.

While Tsubo does not disclose that the base plate is longitudinally adjustably mounted relative to said rocker plate to accommodate items in said bin of differing longitudinal extents,

Tsubo does disclose a first support member 34 attached to the base plate which allows the apparatus to accommodate longer sheets.

Morinaga discloses a recording paper auxiliary tray (23) which extends the length of the recording paper setting tray unit (2) by pulling the auxiliary tray out (col. 4, line 9-14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Tsubo's apparatus to include a slidable auxiliary tray, as taught by Morinaga, because a slidable tray would allow the device to be more compact and therefore save space.

Response to Amendment / Arguments

Applicant has added claim 6 and amended claim 1.

Applicant has amended claim 1 to include the limitation, "said rocker plate adapted to support said stack of contiguous items ..."

Applicant has argued that Tsubo's "L"-shaped stopper plate does not support paper items and instead, Tsubo's papers are supported by the inclined document table and slanting plate. While examiner agrees that both the inclined document table and slanting plate support the papers, Examiner disagrees that Tsubo's "L"-shaped stopper plate does not support paper items. Tsubo's "L"-shaped stopper plate does, in fact, support the paper items even if only temporarily while the papers are jogged by the stopper plate.

Applicant has amended claim 1 to include the limitation, "said rocker plate adapted to oscillate in said vertical plane when said apparatus is operating ..."

Applicant has argued “L” shaped stopper plate does not reciprocate in a vertical plane all the time and instead the stopper plate does so only when the number of paper items in the stack is less than six. While examiner agrees that “L” shaped stopper plate does not reciprocate in a vertical plane all the time, all the claim requires is that the rocker plate oscillate when the apparatus is operating. By oscillating the amount of sheets reaches six or less, Tsubo’s L-shaped stopper plate does oscillate when said apparatus is operating. Therefore, Tsubo does meet the claim language.

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 is allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kohner whose telephone number is 571-272-6939. The examiner can normally be reached on Mon-Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Kathy Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew J. Kohner
Examiner
Art Unit 3653

mjk

Kathy Matecki
KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600